

Appl. No. 10/695,580
Amdt. dated 2/17/06
Reply to Office action of 08/02/2005

REMARKS/ARGUMENTS

Reconsideration of the application is requested.

The Examiner's confirmation of receipt of the Claim for Priority under 35 U.S.C. § 119 and certified copy of the priority document for German Patent Application 102 50 540.3, filed October 29, 2002, is appreciated.

Claims 1-10 remain in the application and are subject to examination. No claims have been withdrawn, amended, added or canceled.

In "Claim Rejections - 35 USC § 103" on pages 2-3 of the above-identified Office Action, claims 1 and 2 have been rejected as being obvious over U.S. Patent Application Publication No. US 2003/0002272 to Suehiro et al. (hereinafter Suehiro) in view of U.S. Patent Application Publication No. US 2005/0286840 to Ho et al. (hereinafter Ho) under 35 U.S.C. § 103(a).

Applicant respectfully notes that Ho has a United States filing date of October 29, 2002. See 35 U.S.C. § 102(e). As set forth in the Declaration of record, the instant application claims international priority of German Application No. 102 50 540.3, filed October 29, 2002, under

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35 U.S.C. § 119. Pursuant to 35 U.S.C. § 119, applicant is entitled to the priority date of the German application. See MPEP §§ 201.13. Thus, the instant application has the same effective filing date as Ho.

However, 35 USC § 102(e) states that a person shall be entitled to a patent unless "the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent."

Therefore, 35 USC § 102(e) requires that a published application by another be filed "before the invention thereof by the applicant for patent." Since Ho's application was filed on the same date as Applicant's invention, Ho does not have a date "before the invention thereof by the applicant for patent."

Because Ho was not filed before the priority date of the instant application, Applicant respectfully believes that Ho is unavailable as prior art. In addition, it is noted that the Ho application is a CIP and therefore the disclosure of the reference relied upon by the Examiner may not be entitled to Ho's parent application filing date.

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Applicant acknowledges that perfection of priority can only be obtained by filing a certified English translation of the German priority application. See 35 U.S.C. § 119. Applicant filed a Claim for Priority including a certified copy of German application 102 50 540.3 on November 24, 2003.

Concurrently herewith, Applicant is filing a certified English translation of same. Accordingly, Applicant respectfully believes that priority has been perfected and Ho is unavailable as prior art.

Therefore, Applicant respectfully submits that the Section 103 rejection on pages 2 and 3 of the Office action is now moot. It is noted that a reference must qualify under 35 U.S.C. § 102 to be used under 35 U.S.C. § 103.

Finally, Applicant appreciatively acknowledges the Examiner's statement that claims 3-10 "would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." In light of the above, Applicant respectfully believes that rewriting of claims 3-10 is unnecessary at this time.

In view of the foregoing, reconsideration and allowance of claims 1-10 are solicited.

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In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out.

If an extension of time is due, Petition for Extension is herewith made.

Any extension or any other fees associated with this Response that might be due with respect to Sections 1.16 and 1.17 should be charged to the Deposit Account of Lerner and Greenberg, P.A., No. 12-1099.

Respectfully submitted,



Laurence A. Greenberg (29,308)

LAG/bb

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Lerner and Greenberg, P.A.
P.O. Box 2480
Hollywood, Florida 33022-2480
Tel.: (954) 925-1100
Fax: (954) 925-1101